

5-27-2012

State v. Guess Augmentation Record Dckt. 39646

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In the Supreme Court of the State of Idaho

LAW CLERK

STATE OF IDAHO,

Plaintiff-Respondent,

v.

CHARLES EARL GUESS,

Defendant-Appellant.

ORDER GRANTING APPELLANT'S
MOTION TO AUGMENT RECORD

Supreme Court Docket No. 39646-2012
Latah County Docket No. 2006-1646

APPELLANT'S MOTION TO AUGMENT RECORD was filed by counsel for Appellant on June 26, 2012. Therefore, good cause appearing,

IT HEREBY IS ORDERED that APPELLANT'S MOTION TO AUGMENT RECORD be granted and hereby is, GRANTED and the augmentation record shall include the document listed below, file-stamped copies of which accompanied this Motion:

1. First Amended Notice of Appeal, file-stamped March 12, 2012.

DATED this 27th day of June, 2012.

For the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record

AUGMENTATION RECORD

ORDER GRANTING APPELLANT'S MOTION TO AUGMENT RECORD – Docket No. 39646-2012

ORDER GRANTING APPELLANT'S MOTION TO AUGMENT RECORD – Docket No. 39646-2012

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CASE NO. _____
2012 MAR 12 PM 12:36
CLERK OF DISTRICT COURT
LATAH COUNTY
BY _____

Attorneys for Defendant Charles E. Guess

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO, an individual;

Plaintiff-Respondent,

v.

CHARLES E. GUESS;

Defendant-Appellant.

Case No.: CR-2006-0001646

FIRST AMENDED NOTICE OF APPEAL

TO: The State of Idaho and the Latah County Prosecuting Attorney; AND

TO: The Clerk of the above-entitled Court.

NOTICE IS HEREBY GIVEN THAT:

The above named Appellant Charles E. Guess appeals against the above-named Respondent to the Idaho Supreme Court from the Order Denying Defendant's Motion to Dismiss Withheld Judgment, entered in the above entitled action on the 23rd day of December, 2011, and the Order Denying Defendant's Motion To Enforce Rule 11 Plea Agreement And Order Denying Defendant's Motion To Set Aside Guilty Plea, Terminate Probation, Dismiss Action And Restore Civil Rights, entered in the above entitled action on the 6th day of February, 2012, the Honorable John R. Stegner presiding.

FIRST AMENDED NOTICE OF APPEAL - 1

A. Appellant has a right to appeal to the Idaho Supreme Court, and the Judgment/Order described in paragraph A above is an appealable Order under and pursuant to I.A.R. 4 and I.A.R. 11(b)(4), (6) and/or (9).

B. A preliminary statement of issues on appeal, which the Appellant intends to assert in this appeal are as follows; provided, the following list of issues is not exhaustive and Respondent should expect others from Appellant:

1. Whether a district has discretion to deny a defendant's request to set aside a guilty plea, dismiss an action and restore civil rights after said defendant has complied with all terms and conditions imposed upon him through that Rule 11 Plea Agreement, which was accepted by the Court without qualification?

2. Whether a defendant who complies with all terms and conditions under a five-year period of probation, pays all restitution, serves 30 days in jail and performs all other required terms of probation (including community service) has satisfied the "compatible with public interest" element of I.C. § 19-2604(1).

3. Whether the satisfaction of the "compatible with public interest" element of I.C. § 19-2604(1) may be determined exclusively based upon the fear ~~desire~~ of one of the two victims and that based upon this fear the district court can rule that the defendant's plea not be set aside after said plea was entered pursuant to a Rule 11 Plea Agreement (which said Agreement required a withheld judgment) and the defendant has complied with all terms and conditions imposed upon him?

4. Whether ~~may~~ a district court deny the defendant's request to set aside his guilty plea, dismiss the action and restore civil rights after said defendant received a withheld judgment pursuant to the terms of a Rule 11 Plea Agreement and said defendant has complied with all terms and conditions imposed upon him?

5. Whether a defendant has contractual and constitutional rights to enforce a Rule 11 Plea Agreement (which contractually provided said defendant with a withheld judgment) to set aside a guilty plea, enter a plea of not guilty, dismiss the action and have all civil rights restored, once the defendant complied with all terms and conditions imposed upon him?

6. Whether, assuming a plea agreement is vague, the Rule 11 Plea Agreement may be construed and interpreted in favor of the State when the terms of said Rule 11 Plea Agreement were vague as to when the defendant's guilty plea would be set by the State, even though the State concedes that it expected the defendant to obtain relief under I.C. § 19-2604 and had no recollection of a defendant never obtaining such relief after complying with the terms and conditions imposed upon the defendant?

7. Whether a district court judge may indefinitely suspend a withheld judgment entered pursuant to a Rule 11 Plea Agreement after the defendant has complied with all terms and conditions imposed upon him?

8. Whether there is a limitation of the civil rights which will be restored to a defendant under I.C. § 19-2604(1) when there were no such limitations in the Rule 11 Plea Agreement and I.C. § 19-2604(1) provides that all rights shall be restored?

C. No orders have been entering sealing any documents which are relevant to this Appeal.

D. Appellant requests the preparation of the following portions of the reporter's transcript:

1. June 19, 2006; Hearing on arraignment;
2. August 17, 2006; Interim Hearing;
3. August 31, 2006; Sentencing Hearing;
4. November 16, 2011; Hearing on Defendant's Motion to Dismiss Withheld Judgment; and
5. January 26, 2012~~4~~; Hearing on Defendant's Motion to Enforce Rule 11 Plea Agreement and Order Withholding Judgment, or, alternatively, Motion for Clarification of Order Denying Defendant's Motion to Dismiss Withheld.

E. Appellant requests the following documents be included in the clerk's record, in addition to those automatically included under I.A.R. 28:

1. Affidavit of Charles E. Guess. (filed September 7, 2011);
2. Letters in Support of Motion to Dismiss Withheld Judgment (filed on November 16, 2011);
3. Affidavit of Charles E. Guess (filed on January 19, 2012);
4. Affidavit of Roderick C. Bond (filed on January 19, 2012);
5. Response to Defendant's Motion to Enforce Rule 11 Plea Agreement (filed on January 20, 2012);.

6. Defendant Charles E. Guess' Reply in Support of Motion (filed on January 24, 2012).

F. The undersigned certifies that:

1. A copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Sheryl Engler (hearings held on 6/19/2006, 8/17/2006, 11/16/2011 & 1/26/2012) (Ms. Engler has agreed to transcribe all hearings)
P.O. Box 8068
Moscow, ID 83843

~~Jodi Stordian (hearings on 6/19/2006, 8/16/2006 & 8/17/2006)~~
~~4476 Foxview Loop~~
~~Helena, MT 59602~~

2. The clerk of the district court has been paid ~~(or will be promptly paid by the undersigned counsel upon request)~~ the estimated fee for the preparation of the reporter's ~~partial~~ transcript.

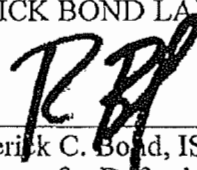
3. The estimated fee, ~~if one was requested,~~ for preparation of the clerk's record has been paid. ~~If the estimated fee was not requested, it will be promptly paid by the undersigned counsel upon request.~~

4. No filing fee is required.

5. Service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 12th day of March, 2012.

RODERICK BOND LAW OFFICE, PLLC

By: 
Roderick C. Bond, ISB No. 8082
Attorney for Defendant Charles E. Guess

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of March, 2012, I caused to be served true and correct copies of the foregoing document to the following parties:

William W. Thompson, Jr.
Latah County Prosecuting Attorney
P.O. Box 8068
Moscow, Idaho 83843

Via:

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ Facsimile - (208) 883-2290
- ☐ Email (pdf attachment)

Sheryl Engler
P.O. Box 8068
Moscow, ID 83843

Via:

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ Email (pdf attachment)

Ken Jorgensen
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

Via:

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ Facsimile (208) 854-8074
- ☐ Email (pdf attachment)



Roderick C. Bond